IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Jail Appeal No. 2089 of 2001

Shyam Sundar … Appellant

Versus

State of Uttaranchal … Respondent

Sri M.K. Agarwal (Amicus Curiae) learned counsel for the appellant
Learned A.G.A. for the respondent

Hon'ble B.C. Kandpal, J.

This criminal jail appeal arising out against the judgment and order dated 06.11.2001 passed by the Sessions Judge, Pauri Garhwal to convict the appellant under Section 376 read with 511 I.P.C. and sentence him for 2 years and 6 months R.I.

Brief facts of the prosecution case are that on 15.04.1999 at 9:05 p.m. Raghvender Singh Negi lodged a complaint at Police Station, Pauri to the effect that he resides in the Government accommodation situated at Police Line Pauri and Head Constable Shyam Sundar accused also resides in the same campus.

On 15.04.1999 at about 7:15 p.m. Km. Ranjana aged about 4 years daughter of the complainant Raghvender Singh Negi was playing in front of her house along with other children. Shyam Sunder – accused took Km. Ranjana to his house and closed the door of his house. After a long lapse of time when Km. Ranjana could not reach to her house then the wife of he complainant started searching her along with her neighbour. When both were passing through the house of the accused Shyam Sundar then the wife of the complainant heard shrieks of Km. Ranjana from inside the house. The neighbour raised alarm and knocked the door then accused Shyam Sundar

opened the door of his house and the witnesses saw the Km. Ranjana was lying on the cot and her undergarments were removed. Wife of the complainant took the Km. Ranjana to her house and told the entire evidence to her husband – complainant.

Km. Ranjana was medically examined and the police after the investigation submitted the chargesheet against the accused under Section 376/511 I.P.C.

After the case was registered, the charges were framed against the accused/appellant who denied all the charges leveled against him and claimed trial.

The prosecution in order to support his case adduced P.W. 1 Smt. Pavitra Devi, P.W. 2 Smt. Urmila Devi, P.W. 3 Savitri Uniyal, P.W. 4 Dr. A.K. Gupta, P.W. 5 Dr. D.P. Singh and P.W. 6 Raghvender Singh Negi (informant) and P.W. 7 Sri Shishpal Singh (Inspector). The statement of the accused/appellant was recorded under Section 313 Cr.P.C. thereafter the accused produced D.W.- 1 Sandeep Johri and D.W. -2 Sukhdhyan Singh in his defence.

Learned trial court after hearing learned counsel for both the parties and perusing the evidence on record, was pleased to convict the accused under Section 376 read with 511 I.P.C. The trial court sentenced the accused/appellant for 2 years and 6 months R.I. vide judgment and order dated 06.11.2001.

Feeling aggrieved by the aforesaid judgment and order the accused/appellant preferred an appeal before this Court, which has been placed before me for disposal.

Heard Sri M.K. Agarwal (amicus Curiae) learned counsel for the appellant, learned A.G.A. for the respondent and perused the record.

The deposition of the prosecution witnesses completely corroborate the prosecution version and it is established beyond reasonable doubt that it was the accused who took Km. Ranjana to his house and after that he bolted the door in order to commit rape upon Km. Ranjana. Km. Ranjana prosecutrix was also found inside the room of the accused.

The Doctors who have been examined by the prosecution have also supported the ocular version as P.W. 3 Smt. Savitri Uniyal has stated that there was swelling in the vegina, a fresh lacerated wound was seen on the backside of the vegina and another fresh lacerated wound was seen on the left side of labia manure. The Doctor stated in the medical report that both the injuries could have been caused by blunt object. The Doctor has also find that these injuries could have been caused by the friction of the penis over the vegina.

Another Doctor P.W. 5 Sri D.P. Singh had examined the accused on the date of the occurrence and he has deposed that the smell of alcohol was coming from the accused at the time of his medical examination.

The entire assessment of the evidence available on the record shows that the prosecution has established its case beyond reasonable doubt. The trial court after assessing the evidence in detail came to the conclusion that it was the accused who committed the offence under Section 376/511 I.P.C.

I do not find any infirmity or illegality in the impugned judgment and order passed by court below.

To my mind the appeal lacks any merit and is liable to be dismissed. Accordingly the appeal is dismissed. The conviction

and sentence passed by the court below vide judgment and order dated 06.11.1999 is maintained.

The perusal of record shows that the appellant remained in jail throughout. Hence, I think, that by now the accused/appellant might have completed the period of the sentence imposed against him. In case, the appellant has completed the sentence imposed against him then he should be released forthwith. Unless wanted in any other case.

For the reasons stated above the appeal is dismissed accordingly.

The Amicus Curiae shall be paid his fee as per rule.

(B.C. Kandpal, J.)

31.07.2004
ASWAL